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1 2 3 4 5 6 7	Mark C. Carlson, Esq., [SBN 166195] Warren K. Miller, Esq., Of Counsel [SBN 141638] CARLSON LAW GROUP, INC. 21031 Ventura Boulevard, Suite 1100 Woodland Hills, California 91364 Telephone No.: (818) 996-7800 Facsimile No.: (818) 884-4285 E-Mail: wkm@carlsonlawgroup.com Attorneys for Defendants, SILVERWOOD PROPER SHAPIRO		Suppose Court of Cour
8	SUPERIOR COURT OF THE STATE OF CALIFORNIA		
9	IN AND FOR THE COUNTY OF LOS ANGELES		
10			
11	DAVID A. GLAZER, an individual,	Case No.: E	
12	Plaintiff,		Filed: July 25, 2017 Honorable Richard E. Rico
13	vs.	DEDI V OF	DEFENDANTS
14	CHENEY ADRIENNE SHAPIRO; CHENEY	SILVERW	OOD PROPERTIES, INC.
15	SHAPIRO DESIGNS 401K; CHENEY SHAPIRO DESIGNS; RESOURCEFUL DEVELOPMENTS,		NETH HOWARD SHAPIRO TIFF'S OPPOSITION TO
16	INC.; RICHARD JUDSON WILLIAMS;		NTS' MOTION TO STRIKE GATIONS PERTAINING TO
17	SILVERWOOD PROPERTIES, INC.; KENNETH HOWARD SHAPIRO; PODLEY ASSOCIATES	PLAINTIF	F'S ENTITLEMENT TO
18	REALTORS; LINDA DARLINGTON SEYFFERT;	PUNITIVE	DAMAGES
19	SEISMIC SAFETY, INC.; EDUMUND J. SYLVIS; KEN LAMARR COMPTON; AND DOES 1	DATE:	October 23, 2017
20	THROUGH 250.	TIME: DEPT:	8:30 a.m. 17
21	Defendants.	Reservation No.: 170922253266	
22		110501 / 11101	
23	The Defendants SILVERWOOD PROPERTI	ES, INC. ("SI	LVERWOOD") and
24	KENNETH HOWARD SHAPIRO ("SHAPIRO," who with SILVERWOOD, the Moving Parties")		
25	submit the following Reply to PLAINTIFF'S OPPOSITION TO DEFENDANTS SILVERWOOD		
26	PROPERTIES, INC. AND KENNETH HOWARD SHAPIRO'S MOTION TO STRIKE PUNTIIVE		
27	DAMAGES ALLEGATIONS (the "Opposition").		
28	///		
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REPLY OF DEFENDANTS SILVERWOOD PROPERTIES, INC. AND KENNETH HOWARD SHAPIRO TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO STRIKE ALL ALLEGATIONS PERTAINING TO PLAINTIFF'S ENTITLEMENT TO PUNITIVE DAMAGES

MEMORANDUM OF POINTS AND AUTHORITIES

I. <u>INTRODUCTION</u>

As stated in Defendants' Motion to Strike:

"To establish malice, it is <u>not sufficient</u> to show only that the defendant's conduct was negligent, grossly negligent or even reckless. [G. D. Searle & Co, supra, 49 Cal.App.3d at 31-32.] That is, the mere carelessness or ignorance of the defendant does not justify the imposition of punitive damages, but instead, what is required is 'conduct that rises to such a level of extreme indifference that decent citizens should not tolerate it." [Hughes v. Blue Cross (1989) 215 Cal. App.3d 832, 847.]

II. ARGUMENT AND AUTHORITY

A. THE OPPOSITION SHOULD NOT BE CONSIDERED AS IT WAS NOT TIMELY SERVED

Plaintiff's Opposition was due to be served October 10, 2017. Plaintiff's Opposition was served *October 12, 2017*, and was not received by Moving Parties until the morning of October 16, 2017, making the Reply due the same day.

B. <u>PLAINTIFF'S COMPLAINT DOES NOT ADEQUATELY PLEAD</u> <u>ULTIMATE FACTS TO SUPPORT AN ENTITLEMENT TO PUNITIVE DAMAGES.</u>

In its Opposition, Plaintiff asserts that "General allegations that Defendant acted with fraud, malice or oppression are sufficient to plead punitive damages, citing *Unruh v. Truck Ins. Exchange* (1972) 7 Cal.3d 616, 632. The Unruh case has had *severe* negative treatment and should not be cited as authority.

All of Plaintiff's allegations against Moving Parties are couched in terms of "...knew or should have known. Moreover, in order to base punitive damages on something other than pure evil motion, Plaintiff should at least plead facts demonstrating that Moving Parties should have known.

Take the case of Angie M. v. Superior Court (1995) 37 Cal.App.4th 1217, which

demonstrates the foundational facts to support the *should have known* basis for punitive damages. *Angie* was an action for intentional infliction of emotional distress arising from alleged extended sexual relationship between a minor and a 48-year-old medical doctor, who gained the minor's trust, had knowledge of her dysfunctional family background and other vulnerabilities, and, as a physician, *should have known* the minor was particularly susceptible to emotional harm.

From the allegations of the Complaint, it appears that Plaintiff's sole basis on which to allege Moving Parties *should have known* is the famalia relationship between Kenneth Shapiro and his daughter, Cheny Adrienne Shapiro. Without more, such a relationship does not, in and of itself, support Plaintiff's conclusionary allegations that Shapiro intentionally covered up defects and intentionally failed to disclose them to the Plaintiff.

III. <u>CONCLUSION</u>

Plaintiff's allegations against Moving Parties is not "conduct that rises to such a level of extreme indifference that decent citizens should not tolerate it" and should be stricken from the Complaint.

Dated: October 16, 2017

CARLSON LAW GROUP, INC.

By:

Mark C. Carlson, Esq.

Warren K. Miller, Esq., Of Counsel

Attorneys for Defendants, SILVERWOOD

PROPERTIES, INC. and KENNETH HOWARD

SHAPIRO

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my present address is: 21031 Ventura Boulevard, Suite 1100, Woodland Hills, California 91364.

On October 16, 2017, I served the foregoing document described as REPLY OF DEFENDANTS SILVERWOOD PROPERTIES, INC. AND KENNETH HOWARD SHAPIRO TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO STRIKE ALL ALLEGATIONS PERTAINING TO PLAINTIFF'S ENTITLEMENT TO PUNITIVE DAMAGES on the parties by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

XX BY MAIL as follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Woodland Hills, California in the ordinary course of business.

BY OVERNIGHT EXPRESS DELIVERY. I deposited it in a box or other facility regularly maintained by GOLDEN STATE OVERNIGHT/FEDERAL EXPRESS, or delivered it to a driver or courier authorized by GOLDEN STATE OVERNIGHT/FEDERAL EXPRESS to receive documents, in an envelope designated by GOLDEN STATE OVERNIGHT/FEDERAL EXPRESS, with deliver fees provided for, and with delivery requested for the next business day.

BY FACSIMILE TRANSMISSION, by use of facsimile machine telephone number (818) 884-4285, in accordance with Code of Civil Procedure §1013(e) and California Rules of Court 2.306, to the within parties at the facsimile number(s) indicated. The fax machine I used complied with Rule 2.301 and this transmission was reported as complete and without error. Under Rule 2.304, I caused the machine to print a transmission record of the transmission report which was issued by the transmitting facsimile machine, a copy of which is attached to the original thereof.

Executed on October 16, 2017, at Woodland Hills, California.

XX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Karon Rudolph

Karon Rudolph

1 David A. Glazer v. Cheney Adrienne Shapiro, et al. LASC Case No.: BC669741 2 Ronald A. Hartmann, Esq. 3 Kurt E. Kananen, Esq. HARTMANN & KANANEN 4 5743 Corsa Avenue, Suite 119 5 Westlake Village, CA 91362 Telephone No.: (818) 710-0151 6 Facsimile No.: (818) 710-0191 E-Mail: Ronald Hartmann <constructiondefects@sbcglobal.net> 7 E-Mail: Kurt E. Kananen < kurtkananen@sbcglobal.net> 8 Attorneys for Plaintiff DAVID A. GLAZER 9 Timothy R. Lee, Esq. 10 LAW OFFICES OF TIMOTHY R. LEE 445 S. Beverly Drive, 2nd Floor 11 Beverly Hills, CA 90212 12 Telephone: (310) 826-2666 Facsimile: (310) 826-2696 13 E-Mail: Timothy R. Lee < trleelaw@hotmail.com > Attorneys for Plaintiff DAVID A. GLAZER 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28